IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 8522 OF 2005 .

Pramod P. Barve ... Petitioner.
V/s.
Sau. Prerana P. Barve ... Respondent.

Shri A.M.Kulkarni for the petitioner.

Shri S.G. Deshmukh for the respondent.

CORAM : V.C.DAGA, J.

DATED : 9.3.2006.

P.C. :

. Heard learned Counsel for the petitioner.

2. During the course of hearing, it has come to my notice that the maintenance granted by the District Court, Sangli, vide order dated 19.10.2002 has not been complied with by the petitioner. When this fact came to the notice of this Court, it was specifically, made clear to the petitioner that before seeking invocation of the writ jurisdiction of this Court; he must comply with the order of the District Court dated 19.10.2002; which has become final and conclusive.

3. The learned Counsel appearing for the petitioner sought time to take instructions, consequently, this matter was adjourned permitting the counsel to take instructions from his client.

4. The learned Counsel for the petitioner after taking instructions; placed before this Court; a conditional offer; stating that his client would deposit the arrears of maintenance but the respondent-wife should not be allowed to withdraw the same. This Court refused to accept such conditional offer.

. Petitioner was heard. Perused petition.

5. This petition is directed against the order dated 1.9.2005; whereby husband- petitioner herein was directed to pay interim alimony at the rate of Rs.1500/- p.m. from the date of main petition, together with a sum of Rs. 5,000/- towards expenses of litigation.

6. The Learned Counsel appearing for the petitioner submitted that this order could not have been passed because application under section 24 itself was not maintainable in view of the earlier order dated 19.10.2002 passed by the 3rd Additional District Judge, Sangli granting maintenance under the provisions of Hindu Adoption and Maintenance Act.

7. The submission; that in view of the order dated 19.10.2002; interim alimony cannot be

granted, cannot be accepted in the light of refusal on the part of the petitioner to comply with the very same order dated 19.10.2002 on the basis of which he is trying to dislodge the respondent-wife of her right to ask for interim maintenance. He cannot be allowed to blow hot and cold.

8. One can appreciate the strength of the submission provided he is ready to comply with the very same order which he accepts to be legal and valid. Petition is thus, liable to be dismissed in limine. However, it is made clear that in the event of actual payment of interim alimony pursuant to the order dated 19.10.2002; it would be open for the petitioner to claim adjustment of such payments, if any.

. The respondent shall be free to execute the impugned order to recover amount of interim alimony in accordance with law.

. So far as litigation expenses are concerned, they were rightly allowed by the trial Court.

9. In the above backdrop, it must be mentioned that looking to the conduct of the petitioner, this is not a fit case where this Court should exercise writ jurisdiction. Petitioner cannot be heard to say that he will not comply with the order and let

the respondent-wife run from one Court to another to seek execution of the order. The petition is, thus, dismissed in limine with costs quantified in the sum of Rs. 5,000/- (five thousand) within two weeks failing which amount of costs shall carry interest @ 12% p.a. from the date of this order till payment in full and final.

(V.C.DAGA,J.)